TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~310~~ 121

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

GIDEON B. WRIGHT, J. V. SHRODE, AND W. C. KNIGHT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF TENNESSEE.

FILED DECEMBER 6, 1869.

1. Question Yes

2. Do. No.

Hoar's argument sound?

Antiop act repealed.

act of 1870. 254.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the middle district of Tennessee, greeting:

Because in the record & proceedings as also in the rendition of a judgment in a plea which is in the said court before you between the United States & Gideon B. Wright, former postmaster at Gallatin, Tennessee, & J. V. Shrode & W. C. Knight, sureties on his official bond, a manifest error hath happened to the great damage of the United States, as by its complaint appears, & it being fit that the error, if any there hath been, should be duly corrected & full & speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly & openly, you send the record & proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December, 1869, in the said Supreme Court, to be then & there held, that, the record & proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right & according to the law & custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 19th day of November, in the
2 year of our Lord eighteen hundred & sixty-nine, & of the independence of the United States the 94th.

E. R. CAMPBELL,
Clerk of the Circuit Court of the United States for the Middle District of Tennessee.

(Indorsed:) The United States vs. Gideon B. Wright, & J. V. Shrode & W. C. Wright, sureties. Writ of error.

A copy of this writ of error was filed in my office on November 19, 1869.

E. R. CAMPBELL,
Clerk Circuit Court U. States for the Mid. Dist. Tenn.

3 UNITED STATES OF AMERICA:

To Gideon B. Wright, former postmaster at Gallatin, Tennessee, & J. V. Shrode & W. C. Knight, his sureties, greeting:

You are hereby cited & admonished to be & appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the middle district of Tennessee, wherein the United States is plaintiff, & you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected & speedy justice done to the parties in that behalf.

Witness the Honorable Connally F. Trigg, one of the judges of said circuit court, this 19th day of November, 1869, & in the 94th year of the independence of the United States.

CONNALLY F. TRIGG,
U. S. District Judge, Presiding.

The above citation was filed in the said circuit court of the U. States on November 19, 1869.

E. R. CAMPBELL, *Clerk*,
By J. W. CAMBELL, *D. C.*

4 (Indorsed:) The United States vs. Gideon B. Wright, & J. V. Shrode & W. C. Knight, sureties. Citation.

I hereby make oath that, on the 19th day of November, 1869, I served this citation on John L. Spurlock, the attorney of the defendants in error, in the circuit court of the United States for the middle district of Tennessee, by delivering to him an exact copy thereof.

R. McP. SMITH.

Subscribed & sworn to before me Nov. 19, 1869.

E. R. CAMPBELL, *Clerk*,
By J. W. CAMBELL, *D. C.*

5 *Assignment of errors.*

THE UNITED STATES
vs.
GIDEON B. WRIGHT, FORMER POSTMASTER AT Gallatin, Tenn., & J. V. Shrode & W. C. Knight, sureties.

The claim of the postmaster for credits was preferred under sec. 5, act March 3, 1863, 12 Statutes, 702; Compilation, 1866, Postal Laws & Regulations, page 27, sec. 89, which is as follows:

"Whenever, by reason of the presence of a military or naval force near any post office unusual business accrues thereat, the Postmaster General is hereby required to make a special order allowing proportionately reasonable compensation to the postmaster, and for clerical service during the period of such extraordinary business."

The claim of the postmaster for an allowance for clerical services during the years 1865, 1866, & 1867, alleged to have been rendered necessary by reason of unusual business growing out of the presence near Gallatin of U. S. military forces during said period had been disallowed by the Post Office Department.

The court permitted the jury to revise the action of the department, to whose discretion the matter was by law confided, to judge both when the state of things existed calling for the allowance, & to what extent
6 it existed. It was error in the court to charge the jury that it was compentent for them to make the allowance to the postmaster when the department has refused it.

R. McP. SMITH,
U. S. Dist. Att'y, Mid. Dist. Tenn.

(Indorsed:) The United States vs. Gideon B. Wright, & J. V. Shrode & W. C. Knight, sureties. Assignment of errors.
Filed Nov. 19, 1869.

E. R. CAMPBELL, *Clerk.*

7 *Caption.*

UNITED STATES OF AMERICA,
Middle District of Tennessee:

At at circuit court of the United States for the district aforesaid, be-

gun and held in the federal court-room in the capitol on this the third Monday, being the eighteenth day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the independance of the United States the ninety-fourth year—present, the Honorable Connally F. Trigg, United States district judge for the several districts of Tennessee, presiding—the following proceedings were had in the case of—

THE UNITED STATES
v.
GIDEON B. WRIGHT, FORMER POSTMASTER AT Gallatin, Tennessee, and J. V. Shrode, and W. C. Knight. } No. 1332.

Summons.

The President of the United States of America to the marshal of the middle district of Tennessee, greeting:

You are hereby commanded to summon Gideon B. Wright, J. V. Shrode, and W. C. Knight, all citizens of Sumner County, Tennessee, if they be found in your district, to be and [and] appear before
8 the judges of the circuit court of the United States, in the sixth circuit, for the district of Middle Tennessee, at the federal court-room at Nashville, in said State, on the third Monday in October next, then and there to answer the United States of America of a plea of covenant broken, to the damage of the United States of $4,000.

Herein fail not, and have then and there this writ.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of said court, this the third Monday in April, in the year of our Lord eighteen hundred and sixty-eight, and of the independence of the United States the 92nd year.

[SEAL OF SAID COURT.] E. R. CAMPBELL, *Clerk.*

On the back of said summons are the following endorsements, to wit:

This summons was issued on the 1st day of June, 1868.

E. R. CAMPBELL, *Clk.*

I hereby appoint and specially deputize N. M. Smith to execute the within summons, and due return to make according to law, Sept. 3, 1868.

E. R. GLASCOCK,
M. M. D. T.

Return.

Executed on G. B. Wright, J. V. Shrode, and W. C. Knight, and delivered to each of them a copy of the declaration, Sept. 4, 1868.

E. R. GLASCOCK, *M. M. D. T.*,
By N. M. SMITH, *Sp'l D. Marshal.*

9 On June 1, 1868, the declaration was filed; which is in the words and figures following, to wit:

Declaration.

Circuit court of the United States for the middle district of Tennessee, October term, 1868.

The United States of America, by attorney, complains of Gideon B. Wright, J. V. Shroder, and W. C. Knight, all citizens of Sumner County, Tennessee, who are in court by summons of a plea of covenant broken:

For that, on March 24th, 1865, in said district, said defendants executed their certain writing obligatory, which is here shown to the court, and the same is annexed to this declaration and made a part thereof as fully as if copied into the same, by which obligation said defendants bond themselves, their heirs, &c., jointly and severally, to pay to plaintiff $4,000, unless said Wright, who, as therein stated, had, on March 11, 1865, been appointed deputy postmaster at Gallatin, and confirmed on same day by the Senate, should comply with the conditions set forth in said obligation, in which event the said obligation (which was under seal) was to be void, but otherwise to remain in full force and effect, and said Wright has wholly failed to comply with the requirements or conditions set forth in said bond or writing obligatory, to the
10 damage of the United States $4,000. Hence suit.

R. McP. SMITH,
U. S. Dis't Attorney.

Certificate of [of] Auditor.

Office of the Auditor of the Treasury for the Post Office Department.

I, Hugh J. Anderson, Auditor of the Treasury for the Post Office Department, do hereby certify the annexed to be a true and correct copy of the original bond of Gideon B. Wright, late postmaster at Gallatin, in the State of Tennessee, now on file in this office.

In testimony whereof I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this 22nd day of May, in the year of our Lord one thousand eight hundred and sixty-eight.

[AUDITOR'S SEAL OF OFFICE.] H. J. ANDERSON, *Auditor.*

P. O. bond.

Know all men by these presents that we, Gideon B. Wright, of Gallatin, in the county of Sumner, and State of Tennessee, and J. V. Shrode and W. C. Knight, both of the State of Tennessee, and county of Sumner, are held and firmly bound unto the United States of America in the just and full sum of four ($4,000) thousand dollars;
11 for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

In witness whereof we have hereunto subscribed our names and affixed our seals this 24th day of March, in the year of our Lord one thousand eight hundred and sixty-five.

The condition of this obligation is such, that whereas the above-bounden Gideon B. Wright was appointed deputy postmaster at Gallatin aforesaid, on the 11th day of March, 1865, confirmed by the Senate of the United States:

Now, if the said Gideon B. Wright shall well and truly execute the duties of said office according to law and the instructions of the Postmaster General, and faithfully once in three months, or oftener if thereto required, render accounts of his receipts and expenditures as deputy postmaster to the Post Office Department in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and shall pay the balance of all moneys that may come to his hands, for the postage of whatever is by law chargeable with postage, in the manner prescribed by the Postmaster General of the
12 United States for the time being, and shall keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transfered or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed, and shall also faithfully do and perform, as agent and depositary of the Post Office Department, all such acts and things as may be required of him by the Postmaster General; and moreover shall faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, postage stamps, stamped envelops, bills, bonds, notes, drafts, receipts, vouchers, and other property and papers, which he as postmaster or as agent and depositary as aforesaid shall receive for the use and benefit of the said Post Office Department, then this obligation to be void; otherwise of force.

13 GIDEON B. WRIGHT. [SEAL.]
J. V. SHRODE. [SEAL.]
W. C. KNIGHT. [SEAL.]

Witness:
R. F. PATTON.
P. H. COATS.

[$1 00 internal revenue stamp cancelled.]

STATE OF TENNESSEE, *Sumner County, ss:*

I hereby certify that J. V. Shrode and W. C. Knight, the sureties above named, and who signed the foregoing bond, are severally responsible and sufficient to insure the payment of the entire penalty named therein.

Witness my hand this 24th day of March, A. D. 1865.

J. F. SCHELL, *J. P.* [SEAL.]

STATE OF TENNESSEE, *County of Sumner, ss:*

J. V. Schrode and W. C. Knight, sureties, being duly sworn, depose and say, and each for himself deposes and says, he has executed the within bond, and that his place of residence is correctly stated therein; that he is a freeholder of said State; and that he is worth double the penalty of the within bond over and above all debts and liabilities against him.

Subscribed and sworn to before me this 24th March, 1865.

J. F. SCHELL, *J. Peace.*

[5-cents int. rev. stamp cancelled.]

Plea.

Defendant for plea says that he fully performed all the cove-

14 nants set forth in said writing obligatory, to each of which he specially refers and applies thereto this allegation; and this he is ready to verify.

JOHN L. SPURLOCK, *Att'y.*

Replication.

Plaintiff says that the defendant's plea is untrue, and this he prays may be enquired of by the country.

R. McP. SMITH,
U. S. Atto.

Issue.

Defendants doth the like.

JOHN L. SPURLOCK, *Atto.*

On November 12, 1869, the following entry appears on the minutes of said court:

Judgment.

THE UNITED STATES
v.
G. B. WRIGHT, J. V. SHRODE, AND W. C. Knight.

The parties appeared by their attorneys, and thereupon came a jury of good and lawful men, to wit, J. J. Miller, S. B. Gordan, B. R. McKinnie, T. C. Trimble, Charles Robertson, T. C. Lind, Henry Powell, D. Ralston, J. G. Tannatt, W. C. Wilhite, K. J. Sample, and Herbert Towns, who, being elected, tried, and sworn well and truly to try the issues joined, after hearing a portion of the evidence, were respitted until to-morrow morning at ten o'clock.

15 On November 13, 1869, the following entry is made on the minutes of said court:

THE UNITED STATES
v.
GIDEON B. WRIGHT, J. V. SCHRODE, AND W. C. Knight.

Came again the parties by their attorneys, and came also the same jury empannelled in this cause on yesterday, who, after hearing conclusion of the evidence, the argument of counsel, and the charge of the court, upon their oaths do say that they find the issue in favor of the plaintiffs, and that the plaintiffs have sustained damages by reason of the premises, amounting to the sum of fifteen $\frac{1s}{100}$ dollars.

It is therefore considered by the court that the United States recover of Gideon B. Wright, J. V. Shrode, and W. C. Knight the damages aforesaid, by the jury aforesaid assessed, and also the costs of this suit, and that fi. fa. issue for the same.

On November 19th, 1869, the following proceedings were had in said cause, which appears on the minutes of said court, to wit:

Presenting bill of exceptions.

UNITED STATES
v.
G. B. WRIGHT ET ALS.

In this cause the United States district attorney presented to the court his bill of exceptions, which was signed and sealed and
16 ordered to be made a part of the record.

Bill of exceptions.

The postmaster claimed at the trial an allowance proved to have been presented to the department and disallowed, of $85 00 for the year 1865, $300 00 for the year 1866, and $150 00 for the year 1867, on account of clerk hire paid out by him during said respective years, which clerical assistance he claimed was necessary, owing to the increased business at the office during said years, arising from the presence near said office of U. S. military forces. Testimony was adduced as to the presence of said forces near said office during said time. The court charged the jury that if they were satisfied that, owing to the presence of such forces near said office during said time, an increased amount of business had been occasioned, it would be proper for them to inquire as to what clerical assistance, if any, was rendered necessary thereby, and to allow said postmaster as a credit the fair compensation for such necessary clerical assistance. To which charge of the court the U. S. district attorney excepted, and tenders this his bill of exceptions, which was signed and sealed and ordered to be made a part of the record.
17 CONNALLY F. TRIGG. [SEAL.]

THE UNITED STATES OF AMERICA,
Middle District of Tennessee, ss :

I, Edward R. Campbell, clerk of the circuit court of the United States for the district aforesaid, do hereby certify that the foregoing is a true and perfect transcript of the record and proceeding in the case of the United States against Gideon B. Wright, late postmaster at Gallatin, Tennessee, and sureties on his official bond, as the same appears of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at office in Nashville, this the 2 day of December, in the year of our Lord 1869, and of the independence of the United States the 94th.

[SEAL.] E. R. CAMPBELL, *Clerk.*

(Indorsement on cover:) No. 319. The United States, plaintiff in error, vs. Gideon B. Wright, J. V. Shrode, and W. C. Knight. M. Tennessee C. C. U. S.

Filed 6th December, 1869.

In the Supreme Court of the United States.

December Term, 1870.

THE UNITED STATES, *Plaintiff in Error*,
vs.
GIDEON B. WRIGHT, J. V. SHRODE, AND W. C. KNIGHT.

No. 121.

In Error to the Circuit Court of the United States for the Middle District of Tennessee.

BRIEF FOR UNITED STATES.

This was an action against principal and sureties on a postmaster's bond. At the trial, defendants claimed, by way of set-off, under section 5 of the act of March 3, 1863, certain credits which were proved to have been presented by the postmaster to the Department and disallowed. The section mentioned provides—

"That whenever, by reason of the presence of a military or naval force near any post office, unusual business accrues thereat, the Postmaster General is hereby required to make a special order allowing proportionately reasonable compensation to the postmaster, and for clerical services, during the period of such extraordinary business." (12 Stat., 702.)

Testimony was admitted as to the presence of United States military forces near the office of the postmaster during the period to which his claim related, and the court charged the jury that "if they were satisfied that, owing to the presence of such forces near said office

during said time, an increased amount of business had been occasioned, it would be proper for them to inquire as to what clerical assistance, if any, was rendered necessary thereby, and to allow said postmaster as a credit the fair compensation for such necessary clerical assistance." (Record, p. 7.)

It is submitted that the court erred in referring to the jury a matter which, under the law, rested wholly in the discretion of the Postmaster General.

By the 9th section of the act of July 5, 1836, which prescribes the general duties of that officer, he is, among other things, required "to control, according to law, * * * the allowances to postmasters, the expenses of post offices, and other expenses incident to the service of the Department; to regulate and direct the payment of the said allowances and expenses for which appropriations have been made," &c., (5 Stat., 81.) The 5th section of the act of 1863, quoted above, makes it the duty of the Postmaster General to allow "proportionately reasonable compensation" to postmasters under the circumstances therein stated; but it contains no special provision as to the regulation of this allowance. That is left entirely to his discretion, under the general statutory provisions referred to. What was a "proportionately reasonable compensation" was, therefore, proper for the determination of the Postmaster General alone, upon a consideration of all the facts, and it was not competent for the court or jury to revise his judgment upon the matter.

See 3 Story's Rep., 744, 745.

It does not appear, from the record, that there was no

allowance whatever made to the postmaster by the Department, on account of increased business at his office by reason of the presence of the military forces near thereto; but only that the particular amounts claimed were disallowed. These amounts, perhaps, represent simply what, in the estimation of the Postmaster General, exceeded a fair allowance for the period to which they respectively relate, and constitute the difference between such compensation as was ordered by him and such as was claimed by the postmaster. Yet, even if no allowance had, in fact, been ordered by the former, it was not competent for the jury to make one, for reasons already stated.

A. T. AKERMAN,
Attorney General.

C. H. HILL,
Assistant Attorney General